

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-20669

SHERROD JAMES,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION FOR
RETURN OF PROPERTY**

Pending before the court is Defendant Sherrod James' *pro se* Motion for Return of Property. (Dkt. # 18.) On September 2, 2013, the Detroit Police Department executed a state search warrant at 285 Owen Street, Detroit, Michigan. Detroit Police arrested James during the search and seized over twenty-eight grams of cocaine base, a green Ford Expedition, and \$1,195 in United State currency. He eventually pleaded to possession with intent to distribute controlled substances and was sentenced to 188 months imprisonment.

Defendant now moves to have the vehicle and currency returned, citing 18 U.S.C. § 981. This request is properly made by motion under Federal Rule of Criminal Procedure 41(g), so the court will construe this *pro se* motion as such. The Government has responded, however, and informed the court that no federal agency ever took possession of the property. (Dkt. # 29, Pg. ID 151.) Instead, the property "was taken into possession by the Detroit Police Department, who forfeited the property as being involved in criminal activity, pursuant to their state/local forfeiture authority." (*Id.*)

Success on a motion to return property requires the movant to show that the federal government actually or constructively possessed the property at issue. See *United States v. Obi*, 100 F. App'x 498, 499 (6th Cir. 2004). Defendant has not argued that the federal government is in possession of the property, nor offered any evidence that would lead the court to believe that the items in question were ever actually or constructively in the Government's custody. The only relevant allegation contained in his Motion is that "the Detroit Police Department executed [the] search warrant." (Dkt. # 18.) This supports the Government's position.

Accordingly, IT IS ORDERED that Defendant's Motion for the Return of Property (Dkt. #18) is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 14, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 14, 2016, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
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